

e comments in response

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Emergency Preparedness

Planning of the National

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applicable only to cellular carriers.³ Requiring cellular carriers wishing to offer "any form of cellular priority access service" to follow the CPAS rules⁴ while allowing any other wireless provider, including competing Personal Communication Service ("PCS") providers, the freedom to craft customized solutions without regard to the CPAS requirements places cellular carriers at a distinct competitive disadvantage. SBMS also believes that limitation of liability provisions for CPAS services should be expressly stated and that all carriers be allowed to provide "customized" solutions for priority access to state, county and/or local government entities.

In order to encourage greater deployment, certain provisions of the proposed rules should be deleted and a cost recovery method should be examined. SBMS also agrees that the CPAS issues should be examined as part of the pending public safety rulemaking proceeding. CPAS cannot be viewed as replacing the need for an allocation of spectrum for public safety purposes. CPAS is not and should not be considered as a replacement alternative for police radio service, fire radio service, emergency radio service and the other public safety radio services discussed in the Public Safety NPRM. Misuse of CPAS in less than true national security/emergency preparedness ("NS/EP") situations will discourage implementation by the carriers. Thus, the CPAS rules should include provisions which preclude its use as an agency's primary wireless communications service or otherwise limit its use to significant emergency situations.

³Petition, fn. 4. See Also, Appendix B--Proposed Rules, B(2)(d)(2) (definitions) Service Provider: **An FCC-licensed cellular carrier**. The Term does not include agents of the licensed cellular carrier or resellers of cellular service. (emphasis added).

⁴Petition, Appendix B--Proposed Rules B(3)(e).

A. ANY PROVISIONS MUST BE MADE APPLICABLE TO ALL CMRS PROVIDERS.

The proposed rules define "service provider" as an "FCC-licensed cellular carrier" and provide that such "service providers who offer **any** form of cellular priority access service for NS/EP purposes **shall** provide that service in accordance with this appendix" (i.e. the proposed rules).⁵ Thus, any cellular provider wanting to provide any form of priority access for NS/EP purposes is restricted to providing that service in accordance with the proposed rules. Other Commercial Mobile Radio Service (CMRS) providers, including PCS providers, however are not restricted to the confines of the proposed rules and thus are free to work with state and local agencies to craft customized NS/EP priority access solutions. Applying the CPAS rules only to cellular carriers is blatantly discriminatory and places the cellular carriers at a distinct competitive disadvantage. Requiring cellular carriers to provide priority access only pursuant to the CPAS rules while allowing other CMRS providers to craft customized solutions will significantly impact the cellular carriers ability to effectively market to local and state agencies.

The NCS acknowledges that the "Commission could decide to make these rules applicable to all wireless service providers which are able and willing to provide priority access for NS/EP telecommunications and avoid a potential future rulemaking".⁶ Adopting cellular specific requirements would be contrary to steps already taken by this Commission in implementing the

⁵Petition, Appendix B--Proposed Rules B(2)(d)(2); B(3)(e). (emphasis added).

⁶Petition, fn. 4.

Congressional intent underlying the Omnibus Budget Reconciliation Act of 1993⁷--there should be regulatory symmetry amongst CMRS providers. The Commission should not place cellular at a competitive disadvantage in marketing to local and state municipalities. Any rules adopted should be applicable to all CMRS providers.

B. CERTAIN MODIFICATIONS TO THE PROPOSED RULES WILL ENCOURAGE GREATER DEPLOYMENT.

SBMS believes that the willingness of CMRS providers to deploy CPAS would be enhanced if certain changes were made to the proposed rules. One factor that must be remembered in promulgating the CPAS rules is that the CMRS spectrums are used for public commercial purposes and thus cannot be dedicated to public safety needs. As NCS admits CPAS merely allows the next available channel to go to the priority user at the top of the queue and does not include the right to preempt connected calls. Thus, NCS' example that the first message that the public heard from the city after the Oklahoma City bombing was "Stop using your cellular phones" is likely to be one of the first messages the public hears in the event of similar large scale disasters regardless of whether CPAS is deployed in an area.⁸ Further, use of CPAS capability in less than a true emergency situation will cause congestion and frustration to the normal customers. Thus, the willingness of CMRS providers to deploy CPAS will be directly related to the rules surrounding its

⁷In the Matter of Implementation of Sections 3n and 332 of the Communications Act; Regulatory Treatment of Mobile Services, GN No. 93-252, Second Report and Order, paras. 1-2 (March 7, 1994).

⁸The good news is that experience has shown that the public is quick to respond to such requests as indicated by the Oklahoma City experience wherein 97% of the call attempts were completed on the first attempt during the three days following the explosion--a significant factor given the number of phones supplied by both cellular carriers, free of charge, to rescue and emergency personnel at the site.

use and the obligations placed on the CMRS providers. SBMS submits that the following changes to the proposed rules will better encourage CMRS providers to deploy CPAS:

1. Limitation of Liability--Carriers need to be assured that implementing CPAS does not result in additional liability. Radio waves by their very nature are subject to attenuation due to atmospheric conditions, terrain and numerous other factors. Likewise, carriers should be protected against claims by individuals who are not able to complete 911 or other emergency calls due to heavy usage by CPAS authorized users. The proposed rules must contain explicit limitation of liability provisions.
2. Assurance of True Emergency Use Only--CMRS providers need to be assured that CPAS capability is used in extreme emergency situations only. CPAS should not be used, for example, as the primary means for the sheriff to communicate regarding normal duties (i.e. traffic accidents, etc.) merely because he runs into congestion on the cellular network.
3. Deletion of Certain Obligations--The proposed rules require the carriers to assume new duties, seemingly beyond that required by its license. For example, a cellular carrier providing CPAS is obligated by the proposed rules to "insure that (at) all times a reasonable amount of cellular spectrums is made available for public use."⁹ The specification of this duty implies that it is something over and above that which is required by the carrier as the cellular licensee. CMRS providers are less likely to deploy CPAS if it includes taking on such ambiguous additional obligations. To

⁹Petition, Appendix B--Proposed Rules B(3)(e)(8).

encourage deployment the obligation should be deleted. Likewise, CMRS providers are not likely to participate without knowing the regulations and procedures they are going to be required to follow. Thus, deployment would also be encouraged by deleting Section B(3)(e)(9) which obligates the carrier to "comply with regulations and procedures supplemental to and consistent with this appendix which are issued by the EOP".

4. Cost Recovery--The costs of deploying and maintaining CPAS are still unknown. CMRS carriers need to be assured that there will be a cost recovery method. In addition, CMRS providers need to be assured that they can offer specific rates for CPAS service without a requirement that such rates be offered to other non-CPAS customers.

C. CPAS STANDARDS NEED TO BE DEVELOPED THROUGH THE TRADITIONAL INDUSTRY STANDARD COMMITTEES.

The proposed rules provide that the Executive Office of the President (EOP) may "issue new or revised regulations, procedures, and instructional material supplemental to and consistent with this appendix regarding the operation, administration and use of CPAS".¹⁰ CPAS standards, as they relate to the actual provision of the service, need to be addressed in the standard industry forums. As NCS notes, the switch manufacturers have indicated that the service may be available for implementation in late 1997, however, this time line does not include analog

¹⁰Petition, Appendix B--Proposed Rules, B(3)(a)(6).

technology.¹¹ Technical standards need to developed though the industry not mandated by the EOP-- without industry agreed upon standards CPAS seems doomed to fail.

CONCLUSION

For the reasons stated herein, the proposed rules should be modified to assure that the same rules are applicable to all CMRS providers and to assure that deployment of CPAS is encouraged rather than discouraged.

Respectfully submitted,

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¹¹SBMS would note that in discussing the service NCS states that the "service would require no special activation and would be available at all times in equipped markets". (Petition, p. 11). There must be an initial activation and set-up in order to provide the service.